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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 BRIAN KRONMEYER, an Individual,

13 Plaintiff,

14 vs.

15 FEDEX FREIGHT, INC, a foreign
16 corporation,

17 Defendant.

CASE NO.:

COMPLAINT AND JURY DEMAND

18
19 The Plaintiff Brian Kronmeyer (“**Mr. Kronmeyer**” or “**Plaintiff**”) by and through his
20 attorneys, Jenny L. Foley, Ph.D., Esq. and Rex Martinez, Esq. of HKM Employment Attorneys
21 LLP, hereby complain and allege as follows:

22 **JURISDICTION**

23 1. This is an action for damages brought by Plaintiff for unlawful workplace
24 discrimination based on race under Title VII of the Civil Rights Act of 1964 (“Title VII”); for
25 monetary damages to redress the deprivation of rights secured to the Plaintiff by the Civil Rights
26 Act of 1871, 42 U.S.C. § 1981; and for certain claims brought pursuant to the Nevada Revised
27 Statutes as outlined below.
28

1 2. This Court has primary jurisdiction over claims set forth herein pursuant to 28
2 U.S.C. § 1331 (federal question), 28 U.S.C. §1343(a) (4) (civil rights action) and 42 U.S.C.
3 §2000e-5(f)(3) (unlawful discrimination and retaliation in employment). Additionally, this
4 Court has supplemental jurisdiction over any state law claims pled herein pursuant to 28 U.S.C.
5 § 1367.

6 3. All material allegations contained in this Complaint are believed to have
7 occurred in Clark County, Nevada. Therefore, venue properly lies in the southern division of
8 the United States Court for the District of Nevada pursuant to 28 U.S.C. §1391(b)(2).

9 **EXHAUSTION OF ADMINISTRATIVE REMEDY**

10 4. On or about February 9, 2018, Plaintiff initiated the process of filing a Charge
11 of Discrimination against his employer, the Defendant named in this action with the Nevada
12 Equal Rights Commission wherein he alleged discrimination based on race, age, sex, and
13 retaliation.

14 5. On or about October 19, 2020, Plaintiff received his Notice of Right to Sue from
15 the Equal Employment Opportunity Commission.

16 6. This action is timely filed pursuant to 42 U.S.C. § 2000e-5(f).

17 7. Plaintiff has exhausted his administrative remedy on all claims pled hereunder
18 prior to filing this action with this Court.

19 **GENERAL ALLEGATIONS**

20 8. Plaintiff incorporates all of the allegations in the preceding paragraphs as though
21 fully set forth herein.

22 9. Plaintiff is a United States citizen and current resident of Clark County, Nevada.

23 10. Defendant FEDEX FREIGHT, INC (hereinafter “**Company**” or “**Defendant**”)
24 is a foreign corporation and an employer doing business in the State of Nevada.

25 11. At all times relevant to this matter, Defendant had over 50 employees, and is
26 therefore subject to the provisions of Title VII.

27 12. Plaintiff is an African American male.

28 13. Plaintiff began his employment with the Company in 2008 as a City Driver and

1 has been a superlative employee since that time.

2 14. Prior to working for the Company, Plaintiff had worked for several years as a
3 company trainer for Darden Restaurants and Red Robin International.

4 15. Accordingly, because of Plaintiff's extensive background as both a trainer and
5 City Driver, he was well qualified for any position within being a Driver and/or Instructor.

6 16. In or about August 2016, Defendant posted a job opening for Driver
7 Development Instructor.

8 17. Plaintiff applied for the Driver Development Instructor position because of his
9 vast and relevant experience.

10 18. Upon information and belief, Plaintiff was the only African American to apply
11 for the position.

12 19. Upon information and belief, Plaintiff was the only applicant for the position.

13 20. Thereafter, the position posting was cancelled.

14 21. Despite Plaintiff being well qualified, Plaintiff never received an interview, any
15 follow up, or any explanation as to why the posting had been removed.

16 22. Upon information and belief, this happened a second time in October 2016,
17 where the same series of events occurred.

18 23. Upon information and belief, Plaintiff once again applied for the Driver
19 Development Instructor position, was the only African American candidate (and seemingly the
20 only candidate), and then the job posting vanished.

21 24. This position was posted for a third time in approximately July 2017.

22 25. Plaintiff applied and was again the only African American to apply for the
23 position.

24 26. Plaintiff was not hired for the position, and instead, the position was given to a
25 Caucasian male, Ken LNU, who had less Company seniority and less experience as an
26 instructor than Plaintiff.

27 27. The pattern continued as, upon information and belief, in January 2018, another
28 Driver Development Instructor position open.

1 28. Once again, Plaintiff applied for the position, was the only African American
2 candidate, and then was not hired for the position.

3 29. This opening instead went to Earl Johnson, a Caucasian male.

4 30. Mr. Johnson had less Company seniority and was far less qualified than Plaintiff
5 as Mr. Johnson had no instructor or training experience.

6 31. Plaintiff also had more driving experience than Mr. Johnson.

7 32. Furthermore, during the interview phase, Plaintiff explained and provided video
8 evidence of Mr. Johnson breaking Company policy.

9 33. Nevertheless, Plaintiff was once again denied the position that he was well
10 qualified for, which was again given to a Caucasian male with less experience and less seniority.

11 34. Shortly thereafter, an incident occurred where Plaintiff had modified a delivery
12 time on a single delivery to make it appear as it had arrived at another time.

13 35. At the time of the occurrence, Plaintiff's supervisor was aware that Plaintiff had
14 done this, and management could see that it occurred on their system.

15 36. Upon information and belief, the day of the incident, Plaintiff had explained that
16 others knew how to do this and were doing it often.

17 37. Upon information and belief, Plaintiff, among several other employees, were
18 taught to do this by the previous trainer.

19 38. Upon information and belief, this was a widespread practice as at least twelve
20 (12) others were known to do it at that time, and management could see every time a driver
21 modified a delivery time.

22 39. Upon information and belief, Mike Germanski, a Caucasian male driver, was
23 known to do this, and at one point received a two-week suspension for doing it.

24 40. Upon information and belief, Mr. Germanski was brought back after only one
25 week of suspension.

26 41. Nevertheless, Defendant terminated Plaintiff for doing the exact same thing a
27 single time.

28 42. Plaintiff had worked for Defendant for nearly ten (10) years and was always an

1 exemplarily employee.

2 **FIRST CAUSE OF ACTION**

3 **(Discrimination Based on Race in violation of State and Federal Statutes)**

4 43. Plaintiff incorporates all of the allegations in the preceding paragraphs as though
5 fully set forth herein.

6 44. Plaintiff is a member of the class of persons protected by state and federal
7 statutes prohibiting discrimination based on race.

8 45. Defendant as an employer is subject to Nevada and federal statutes prohibiting
9 discrimination, NRS 613.330 et. seq., Title VII, 42 U.S.C. § 2000e et. seq. as amended and thus,
10 has a legal obligation to provide Plaintiff with a work environment free from discrimination
11 and harassment.

12 46. Defendant discriminated against Plaintiff by constantly denying Plaintiff a
13 promotion that he was well qualified for because of his race.

14 47. Plaintiff was the only African American who applied, and a few times was the
15 only person to apply.

16 48. Rather than hire Plaintiff who was well qualified for the position, Defendant
17 chose to discriminate against Plaintiff by denying him the position and instead hiring less
18 qualified Caucasian males with less Company seniority.

19 49. Defendant also discriminated against Plaintiff by terminating him when other
20 non-African Americans were only subject to suspension for doing the exact same thing.

21 50. Plaintiff suffered adverse economic impact due to Defendant's discriminatory
22 behavior and termination.

23 51. Plaintiff was embarrassed, humiliated, angered and discouraged by the
24 discriminatory actions taken against him.

25 52. Plaintiff suffered compensable emotional and physical harm, including but not
26 limited to, headaches, sleeplessness, anxiety, and depression resulting from this unlawful
27 discrimination by his employer.

28 53. Plaintiff is entitled to be fully compensated for his emotional disturbance by

1 being forced to endure this discrimination.

2 54. Pursuant to 1991 Amendments to Title VII, Plaintiff is entitled to recover
3 punitive damages for Defendant's intentional repeated violations of federal and state civil rights
4 laws.

5 55. Plaintiff suffered damages in an amount deemed sufficient by the jury.

6 56. Plaintiff is entitled to an award of reasonable attorney's fees.

7 57. Defendant is guilty of oppression, fraud or malice, express or implied as
8 Defendant knowingly and intentionally discriminated against Plaintiff because of his race.

9 58. Therefore, Plaintiff is entitled to recover damages for the sake of example, to
10 deter other employers from engaging in such conduct and by way of punishing the Defendant
11 in an amount deemed sufficient by the jury.

12 **SECOND CAUSE OF ACTION**

13 **(Violation of the Civil Rights Act of 1871, §1981)**

14 59. Plaintiff incorporates all of the allegations in the preceding paragraphs as though
15 fully set forth herein.

16 60. Plaintiff is African American and therefore a member of a protected class.

17 61. Defendant engaged in the above-mentioned harassment and discrimination of
18 Plaintiff with the purposeful intent to discriminate against him because of his race (African
19 American).

20 62. Under similar circumstances, other, white or non-African American employees
21 were not subjected to a racially hostile working environment.

22 63. Plaintiff was subject to an adverse employment action by being consistently
23 denied a position that he was well qualified for, positions that ultimately went to Caucasian
24 males with less experience.

25 64. Defendant also subjected Plaintiff to the adverse action of terminating him for
26 something that Caucasian males were only suspended for.

27 65. Plaintiff suffered damages in an amount deemed sufficient by the jury.

28 66. Plaintiff is entitled to an award of reasonable attorney's fees in this matter.

68. Therefore, Plaintiff is entitled to recover damages for the sake of example, to deter other employers from engaging in such conduct and by way of punishing the Defendant in an amount deemed sufficient by the jury.

(Intentional/Negligent Infliction of Emotional Distress)

70. Defendant's conduct toward Plaintiff was extreme, outrageous, and caused significant emotional harm, headaches, sleeplessness, and various physical and mental distress.

72. Plaintiff was either the only African American candidate or only candidate at all, and yet Defendant chose to discriminate and remove the position rather than hiring an African American for the position.

74. Defendant had a duty to refrain from engaging in discrimination as described above.

76. Defendant's intentional or negligent conduct was the legal, actual, proximate cause of Plaintiff's extreme and/or severe emotional distress by engaging in the conduct described herein.

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1 enjoyment of life because they engaged in illegal actions.

2 78. Because Defendant is guilty of oppression, fraud or malice, express or implied,
3 Defendant must pay Plaintiff an additional amount for the sake of example and by way of
4 punishment.

5 79. Plaintiff has had to obtain the services of an attorney to protect his rights and
6 secure compensation for the damages incurred as a result of these violations and therefore, he
7 is entitled to recover reasonable attorney's fees against Defendant.

8 **FIFTH CAUSE OF ACTION**

9 **WHEREFORE**, Plaintiff prays this court for:

- 10 a. A jury trial on all appropriate claims;
11 moreover, to enter judgment in favor of the Plaintiff by:
12 b. Awarding Plaintiff an amount sufficient to fully compensate his (including tax
13 consequences) for all economic losses of any kind, and otherwise make his
14 whole in accordance with Title VII, the Civil Rights Act of 1871, §1981, and
15 certain claims brought pursuant to the Nevada Revised Statutes;
16 c. General damages;
17 d. Special damages;
18 e. An award of compensatory and punitive damages to be determined at trial;
19 f. Pre- and post-judgment interest;
20 g. An award of attorney's fees and costs; and
21 h. Any other relief the court deems just and proper.

22 Dated this 14th Day of January 2021.

23 **HKM EMPLOYMENT ATTORNEYS, LLP**

24 /s/ Jenny L. Foley

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